Time Warner Inc.
800 Connecticut Ave., N.W.
Washington, DC 20006

Comcast Corporation
2001 Pennsylvania Ave., N.W.
Washington, DC 20006

May 12, 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: MB Docket 05-192

Dear Ms. Dortch:

Time Warner Inc. ("Time Warner") and Comcast Corporation ("Comcast") (collectively, the "Submitting Parties" or "Companies") hereby respond to the inquiries from Commission staff raised in a call on May 4, 2006, as a follow-up to the letter submitted by Time Warner on April 24, 2006. In particular, the staff has requested further explanation for the redactions on the basis of "common interest" privilege from the email strings dated 10/01/04 involving Melinda Witmer, Chief Counsel, Programming, Time Warner Cable, and Allan Singer, Senior Vice President, Programming Investments, Comcast.

The common interest doctrine provides that confidential attorney-client communications remain privileged when shared with a third party, provided that the sharing occurs: (1) pursuant to a common interest shared by both parties; and (2) in furtherance of rendering legal services.[1] The Restatement (Third) of the Law Governing Lawyers §76 states the general principle governing the common interest doctrine:

> If two or more clients with a common interest in a litigated or nonlitigated matter are represented by separate lawyers and they agree to exchange information concerning the matter, a communication of any such client that otherwise qualifies as privileged . . . that relates to the matter is privileged as against third persons.[2]

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[1] *Cavallaro v. United States,* 153 F. Supp. 2d 52, 60 (D. Mass. 2001).

[2] *See also,* ABA Section of Litigation, Treatise on Attorney-Client Privilege and Attorney Work Product Doctrine (4th Ed.) ("Unlike the joint defense privilege, the common interest doctrine does not require or imply that an actual suit is pending or ever will be pending. It does require, however, that a definable common interest exist.")

Courts have interpreted interests protected by the common interest privilege to include the "community of interests" shared by business entities acting in consortium – particularly pursuant to joint ventures and joint development.[3] As members of the potential SportsNet NY joint venture, Time Warner and Comcast shared the common desire to negotiate an affiliation agreement with Sterling Entertainment.[4] Because Time Warner and Comcast acted as collaborators during the negotiations at issue, their communications satisfy the first prong of the common interest doctrine.

The second prong of the common interest doctrine requires that communications be made in furtherance of rendering legal services.[5] Here, Time Warner Cable in-house counsel Melinda Witmer provided legal services, including contract interpretation and negotiation strategy, to Comcast executive Allan Singer. These communications included substantive legal advice, and Comcast had an expectation of the ability to rely on this advice from Time Warner Cable's in-house counsel just as if such advice came from Comcast's own counsel. The Submitting Parties understood the communications between themselves to be confidential and made for the purpose of facilitating the jointly desired negotiation of the affiliation agreement with Sterling Entertainment, and the Companies have acted to protect the privileged nature of such communications.

We trust that the foregoing has been responsive to the staff's inquiry. Please let us know if there are additional questions relating to this matter.

Respectfully submitted,

Comcast Corporation

By: /s/ James R. Coltharp
James R. Coltharp
Comcast Corporation

Time Warner Inc.

By: /s/ Steven N. Teplitz
Steven N. Teplitz
Time Warner Inc.

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[3] *See United States v. United Technologies Corp.*, 979 F. Supp. 108, 112 (D. Mass. 1997) ("members acted not as adversaries negotiating at arms length but as collaborators, legally committed to a cooperative venture and seeking to make that venture maximally profitable"); *see also Heidelberg Harris, Inc. v. Mitsubishi Heavy Industries, Ltd.*,1996 WL 732522 (N.D. Ill. 1996); *SCM Corp. v. Xerox Corp.*, 70 F.R.D. 508, 514 (D. Conn. 1976); *Stougo v. Bea Assocs.*,199 F.R.D. 515, 520 (S.D.N.Y. 2001) ("The fact that there may be an overlap of a commercial and legal interest for a third party does not negate the effect of the legal interest in establishing a community of interest.")

[4] *See* Restatement (Third) of the Law Governing Lawyers §76, cmt. E. ("The communication must relate to the common interest, which may be either, legal, factual or strategic in character. The interests of the separately represented clients need not be entirely congruent").

[5] *See* Rice, Attorney-Client Privilege in the United States §4:36 & nn 68-70 (collecting cases). ("The protection of the privilege [. . .] is applicable whenever parties with common interests join forces for the purpose of obtaining more effective legal assistance.").

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